Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	MM Docket No. 00-10
Establishment of a Class A	)	~~RM-9260~~
Television Service	)	

To: The Commission

COMMENTS OF
THE ASSOCIATION FOR MAXIMUM SERVICE TELEVISION, INC. AND
THE NATIONAL ASSOCIATION OF BROADCASTERS

February 10, 2000

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SUMMARY

In enacting the Community Broadcasters Protection Act of 1999, Congress intended to afford new protections to those LPTV stations that met minimum programming requirements. But it did so fully aware that this could be accomplished only if accompanied by protections that effectively preserved full power analog and digital service. Congress recognized that while it would be desirable to grant some security to LPTVs qualifying for Class A status, these new rights could not be granted at the expense of the free, local and universal television service provided now and in the future by full power television stations. Congress thus provided safeguards to ensure that the new Class A service would not impair full power analog and digital operations. In particular, Congress ensured that full power television stations and the Commission would retain the flexibility to make adjustments to full power DTV facilities during and after the DTV transition.

In this proceeding, it falls to the Commission to carry out this Congressional mandate. It is no easy task. There are many complex technical, legal and processing issues to be resolved. On the whole and with some exceptions, the proposals in the Commission's Notice have gotten it about right. But we urge continued vigilance and care. A well-meaning liberality with respect to Class A stations at the outset, whose longer-term ill-effects may not have been considered with sufficient care, could cause much mischief to the public's television service in the future. The complexities of granting full power stations' DTV implementation proposals have yet to crest, but when they do, the public will have been well-served by the Commission's restrained and realistic implementation of the Class A concept.

The Commission must adopt Class A rules that preserve the public's existing full power analog service and protect the investments that Congress, the Commission, broadcasters, equipment manufacturers, and, most importantly, the public have made in the DTV transition. The positions set forth by MSTV and NAB herein are consistent with this approach.

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The Association for Maximum Service Television, Inc. ("MSTV") and the National Association of Broadcasters ("NAB")[1] file these comments regarding the Commission's Notice of Proposed Rule Making on Establishment of a Class A Television Service (the "Notice").[2] MSTV and NAB support many of the Commission's proposals with regard to the Class A television service. But we urge the Commission to be scrupulous in ensuring that its implementation of the Community Broadcasters Protection Act ("CBPA") does not interfere with the successful transition to digital television ("DTV") service or otherwise eliminate the legitimate and longstanding rights of full power broadcasters. In enacting the CBPA, Congress recognized that the grant of Class A licenses could not come at the expense of the full power television service on which the American public has come to depend. Congress struck a balance

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[1] MSTV represents nearly 400 local television stations on technical issues relating to analog and digital television services. It played a central role in developing the methodology for allotting and assigning digital television channels. NAB is a non-profit, incorporated association of television and radio stations and networks, which serves and represents the American broadcasting industry.

[2] *See Establishment of a Class A Television Service,* Order and Notice of Proposed Rule Making, MM Docket No. 00-10, MM Docket No. 99-292, RM-9260 (adopted Jan. 13, 2000; rel. Jan 13, 2000).

between the desire to afford protection to certain low power television ("LPTV") licensees and the need to preserve the rights of full power broadcasters, both with respect to their analog service and with respect to their existing and future DTV service. In particular, the protection of full power DTV service, now and at the end of the transition, is essential to safeguarding the public interest benefits that flow from our country's free, local, and universal television service. The Commission should adopt rules for the Class A television service that reflect these Congressional and public interest mandates.

I. THE COMMISSION MUST ENSURE THAT THE NEW CLASS A SERVICE DOES NOT JEOPARDIZE THE DTV TRANSITION.

A. Congress Recognized That Class A Licenses Could Not Be Granted At The Expense Of The DTV Transition.

The CBPA amends the Communications Act (the "Act") to permit certain "qualifying" LPTVs to seek Class A status – status that is "roughly similar" to the status of full power analog television stations, yet subject to the exceptions and limitations set forth in the statute.[3] In enacting the CBPA, Congress recognized that the creation of a new Class A television service could not be achieved at the expense of the DTV service provided now and in the future by the nation's full power television stations. In the Conference Report accompanying the CBPA, Congress noted that "[i]n order to provide all full-service television stations with a second channel, the FCC was compelled to establish DTV allotments that will displace a number of LPTV stations."[4] Congress explicitly "recogniz[ed] the importance of, and the engineering complexity in, the FCC's plan to convert full-service television stations to digital format"[5] and

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3 The CBPA is codified as new Section 336(f) of the Act, 47 U.S.C. § 336(f).

4 *See* H.R. Conf. Rep. No. 106-464, at 151 (1999) (*"Conference Report"*).

5 *See id.* at 149.

acknowledged that, because of emerging DTV service, "not all LPTV stations can be guaranteed a certain future."[6] Congress thus struck a balance between its desire to provide some measure of protection to LPTV stations meeting the eligibility and interference criteria of the statute, and its need to protect the existing and future television service provided to the public by full power television stations.

The CBPA includes safeguards to ensure that the Class A service will not jeopardize the Congressionally-mandated DTV transition and the public interest benefits flowing from it. As Congress explained in the Conference Report, the CBPA "protects the ability of [full power] stations to provide both digital and analog service throughout their existing service areas."[7] Indeed, new Section 336(f)(7)(A)(ii) of the Act broadly precludes grant of a Class A license that will interfere with full power digital television service.[8] Congress also explained that the CBPA "requires the FCC to make the necessary modifications [to a full-service station's allotted parameters or channel assignment in the DTV Table] to ensure that such full-service station can replicate or maximize its service area, as provided for in the FCC's rules."[9] New Section 336(f)(1)(D) preserves the Commission's flexibility to modify the allotted parameters or channel assignments of full power DTV stations as necessary to ensure that the public fully benefits from the replicated *and maximized* DTV service provided by these stations, even where such changes conflict with the protection otherwise afforded to a Class A station.[10]

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6 *See id.* at 151.

7 *See id.* at 149.

8 *See* 47 U.S.C. § 336(f)(7)(A)(ii).

9 *See Conference Report* at 152.

10 *See* 47 U.S.C. § 336(f)(1)(D).

Congress intended to protect the DTV transition in enacting the CBPA. The Commission must interpret the CBPA and adopt implementing rules in a manner that stays true to this Congressional intent.

B. The Commission Must Adopt Interference Protection Criteria That Ensure Class A Service Will Not Compromise The DTV Transition.

The CBPA prohibits a Class A station from causing *any* interference within "the digital television service areas provided in the DTV Table of Allotments" and "the areas protected in the Commission's digital television regulations (47 CFR 73.622(e) and (f))."[11] In paragraph 30 of the Notice, the Commission proposes to require Class A applicants "to determine noninterference to DTV in the same manner as applicants for full service NTSC facilities."[12] The Commission explained that "[i]n this manner, Class A facilities would not be permitted to increase the population receiving interference within a DTV broadcaster's replicated service area and any additional area associated with its DTV license or construction permit."[13] MSTV and NAB agree with this approach to protecting the DTV service areas provided in the DTV Table and the areas protected in the Commission's DTV regulations. The Commission further stated that it "would not permit Class A stations to cause de minimis levels of interference to DTV service, other than a 0.5% rounding allowance."[14] The CBPA imposes a "no interference" standard on Class A stations. Therefore, MSTV and NAB agree that such stations must not be permitted to cause "de minimis" interference to the DTV service of full power stations. Moreover, MSTV and NAB question whether the Commission's proposal to use a 0.5%

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11 *See* 47 U.S.C. §§ 336(f)(7)(A)(ii)(I), (II).

12 *See* Notice at ¶ 30.

13 *See id.*

14 *See id.*

rounding allowance is consistent with the statute's "no interference" requirement, and are concerned about the aggregate interference that full power stations could experience to their DTV service as a result of such an allowance.

The CBPA also prohibits Class A stations from causing interference to the future maximized DTV service areas of full power stations. New Section 336(f)(7)(A)(ii)(IV) of the Act precludes grant of a Class A application which would interfere with the maximized service area of stations that filed either maximization proposals prior to December 31, 1999, or maximization notifications by December 31, 1999 and maximization applications by May 1, 2000.[15] The term "maximization" should not be construed to encompass only "situations in which stations seek power and/or antenna height greater than the allotted values."[16] As the Commission suggests, "maximization" also refers to proposals seeking to extend a station's service area beyond the NTSC replicated area by relocating a station from the allotted site.[17] Moreover, one provision of the statute directs the Commission to make modifications to a full-power station's allotted parameters *or channel assignment in the DTV Table* "to permit maximization of a full-power digital television applicant's service area"[18] – indicating that the term "maximization" also encompasses proposals to expand DTV service through channel changes.

The Commission's determination in paragraph 33 of the Notice that Section 336(f)(7) of the Act requires Class A applicants to protect all stations seeking to replicate or

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15 *See* 47 U.S.C. § 336(f)(7)(A)(ii)(IV).

16 *See* Notice at ¶ 32.

17 *See id.*

18 *See* 47 U.S.C. § 336(f)(1)(D).

maximize their DTV service, regardless of the existence of "technical problems."[19] We agree with the Commission's determination that "[t]his interpretation seems most consistent with the intent of Congress to protect the ability of DTV stations to replicate and maximize service areas."[20]

The mandate in Section 336(f)(1)(D) of the Act to permit replication and maximization, and the flexibility granted to the Commission to correct "technical problems," provides broad protection to the DTV service provided by full power broadcasters.[21] This broad protection is fully consistent with Congress' intent to ensure that the Class A service does not compromise the DTV transition. The flexibility inherent in the CBPA to address DTV service problems thus preserves:

- the ability of stations that return to their analog channels at the end of the transition to maximize the DTV service provided on those channels (even though a maximization application could not be filed for that channel by May 1, 2000);
- the ability of stations with two out-of-core channels to maximize their DTV service area once granted an in-core DTV channel at the end of the transition (even though a maximization application for the in-core channel could not be filed by May 1, 2000);
- the ability of full power stations on Channels 60 to 69 to relocate their DTV operations to an in-core channel;
- existing full power stations' flexibility to address DTV allotment problems through channel exchanges and rulemaking petitions to amend the DTV Table;
- the ability to modify full power stations' DTV facilities and channels as needed during the transition;
- the ability to adjust the allotment parameters (including channels) included in the DTV Table to address problems during and at the end of the transition; and

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19 *See* Notice at ¶ 33.

20 *See id.*

21 *See* 47 U.S.C. § 336(f)(1)(D).

- the FCC's general authority to take steps needed to preserve DTV service and "re-pack" the DTV Table at the close of the transition without impairment from the Class A service.

In particular, the Commission must utilize the flexibility explicitly and implicitly granted by the CBPA to ensure that full power stations are able to maximize on their ultimate DTV channels. In the Notice, the Commission requests comment on "how the maximization rights in the statute can be applied to full power stations that maximize their DTV facilities but subsequently move their digital operations to their original analog channel after the transition."[22] The Commission observes that "[s]ome of these stations may not be in a position to file maximization applications on their analog channels by the deadline prescribed in the statute" and asks whether "these stations [can] preserve the right to maximize on their analog channels should they revert to those channels at the end of the transition."[23] Similarly, the Commission seeks comment on "how the maximization allowance in the CBPA applies to full power stations for which the DTV channel allotment or both the NTSC and DTV channel allotments lie outside the DTV core spectrum (channels 2 - 51)" and asks whether "these stations [can] preserve their right to replicate their maximized DTV service area on a new in-core channel once that channel has been assigned."[24]

As an initial matter, MSTV and NAB believe that the Commission has framed the question too narrowly. A full power station's right to maximize on its permanent DTV channel should not be contingent on whether it has maximized on its interim DTV channel. Indeed, various factors, such as technical, practical or financial constraints, might preclude interim

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22 *See* Notice at ¶ 34.

23 *See id.*

24 *See id.*

maximization. Rather, the Commission can and must preserve the rights of these full power stations to maximize on their post-transition DTV channels, regardless of whether they have maximized on their interim DTV facilities.

Specifically, the Commission should develop and propose a means for preserving the rights of full power broadcasters to maximize their DTV service on the channels they ultimately will occupy after the DTV transition – whether that channel is the station's current analog channel or a third channel not currently assigned to the station. Otherwise, stations currently operating on DTV channels that they will not retain at the end of the transition will be disadvantaged in the service they are able to provide post-transition, and the public served by these stations will suffer a loss of service. Such a result would diminish the enhanced digital services available to the public and would contravene the Congressional objective of preserving the public's full power DTV service, as well as the statutory right to maximize DTV facilities.

C. A Full Power Station Requesting An Adjustment To Its DTV Allotment That Will Displace A Class A Station Should Be Required To Demonstrate Only That The Proposal Is A Reasonable Means To Address An Allotment Problem.

In the Notice, the Commission correctly notes that the CBPA preserves full power stations' flexibility to make necessary adjustments to DTV allotment parameters, including channel changes, even where such changes will conflict with a Class A station.[25] In this context, the Commission asks whether "a station requesting an adjustment to the DTV Table that would impinge upon the service area of a Class A station [should] be required to show that the modification can only be made in this manner."[26] This should not be a requirement. Given the

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25 *See* Notice at ¶ 36.

26 *See id.* at ¶ 37.

complexity of the DTV Table, the dynamic nature of the DTV transition and the numerous challenges stations face in transitioning to DTV, it would be infeasible – and even if it were feasible, it would be unduly expensive – for full power stations to demonstrate that a particular proposal is the *only* way to address a problem. Such a requirement would be overly restrictive and would hamper full power stations' ability to navigate the technical obstacles presented during the DTV transition. Stations should be required to demonstrate, if challenged, only that the proposed change is *reasonable* to solve the problem.

The Commission also sought comment on whether, "[i]f the modification requires displacement of the Class A station, . . . the affected Class A [station should] be permitted to exchange channels with the DTV station, provided it could meet interference protection requirements on the exchanged channel."[27] MSTV and NAB agree that such channel exchanges should be permitted, so long as the Class A station meets the applicable interference protection criteria on the exchanged channel.

D. The Interference Protection Afforded To DTV Stations Should Never Be Diminished Below The DTV Service Areas Provided In The DTV Table Of Allotments.

The CBPA provides: "If a station that is awarded a construction permit to maximize or significantly enhance its digital television service area, later files a change application to reduce its digital television service area, the protected contour of that station shall be reduced in accordance with such change modification."[28] In the Notice, the Commission interprets this provision as follows: "We believe that the protection of the reduced coverage area would become effective upon grant of the application that requested the reduced facilities and

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[27] *See id.*

that, in these circumstances, Class A stations would no longer need to protect the service area produced by the 'replication' facilities established in the initial DTV Table of Allotments."[29] MSTV and NAB strongly disagree with this interpretation of the statute. The protection afforded a full power station's DTV service area must *never* be diminished below the service area provided in the DTV Table.

The above-cited provision of the CBPA calibrates the level of interference protection afforded to full power stations under Section 336(f)(7)(A)(ii)(IV) of the Act, which prohibits Class A stations from causing interference to "stations seeking to maximize power under the Commission's rules, if such station has complied with the notification requirements [of the CBPA]."[30] As Congress explained, "[t]his provision is intended to ensure that stations indeed utilize the full amount of *maximized* spectrum for which they originally apply by the [CBPA's] deadlines."[31] It plainly was *not* intended to nullify the CBPA's *independent* requirement that Class A stations cause no interference to "the digital television service areas provided in the DTV Table of Allotments."[32] Thus, the service areas provided in the DTV Table represent the *minimum* degree of interference protection to which a full power station may be entitled for its DTV service, even if that station operates with technical parameters below those allotted. Failure to protect, at a minimum, the service areas provided in the DTV Table would threaten the

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(footnote cont'd)

28 *See* 47 U.S.C. § 336(f)(1)(E).

29 *See* Notice at ¶ 17.

30 *See* 47 U.S.C. § 336(f)(7)(A)(ii)(IV).

31 *See Conference Report* at 153 (emphasis added).

32 *See* 47 U.S.C. § 336(f)(7)(A)(ii)(I).

integrity of the DTV Table and contradict the plain language of Section 336(f)(7)(A)(ii)(I) of the Act.

II. IN GRANTING CLASS A LICENSES, THE FCC MUST PROTECT THE EXISTING INTERFERENCE PROTECTION RIGHTS OF FULL POWER ANALOG LICENSEES AND APPLICANTS.

A. The FCC Must Protect Long-Pending Analog Applications.

The CBPA prohibits Class A stations from causing interference to "the predicted Grade B contour (as of the date of enactment of the [CBPA] . . ., or as proposed in a change application filed on or before such date) of any television station transmitting in analog format."[33] In the Notice, the Commission interprets this provision to require Class A applicants to "protect both stations actually transmitting in analog format and those which have been authorized to construct facilities capable of transmitting in analog format (i.e., construction permits)."[34] MSTV and NAB agree that the statute requires Class A applicants to protect all authorized full power analog facilities, whether or not yet constructed. MSTV and NAB disagree, however, with the Commission's further conclusion not to protect long-pending NTSC applications – including those held by auction winners from the September 1999 broadcast auction and those filed along with requests for waiver of the 1987 TV filing freeze – from Class A stations.[35] In establishing the Class A service, Congress could not possibly have intended to eliminate the rights of these applicants to have their long-pending applications processed in due course.

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33 *See* 47 U.S.C. § 336(f)(7)(A)(i).

34 *See* Notice at ¶ 27.

35 *See id.* at ¶ 28.

Congress intended to place Class A licensees on roughly even footing with full power licensees, to the extent that this could be accomplished without jeopardizing the DTV transition or compromising the existing rights of full power stations. Therefore, subject to the exceptions noted in the CBPA, Class A applicants should be treated in a manner consistent with full power NTSC applicants. As the Commission observes in the Notice, the long-pending analog applications described above are protected against new full service analog applications.[36] Therefore, consistent with treating Class A applicants on a par with full power analog applicants, Class A applicants must be required to protect the long-pending analog applications described above.

Where full power NTSC applications have sought authority to operate on allotments in the TV Table of Allotments,[37] LPTVs operating on conflicting channels have long been on notice that they ultimately would be displaced by full power stations. Therefore, it is fair and equitable that they be required to protect these long-pending applications. Moreover, Congress could not possibly have meant the Commission to grant Class A licenses that would conflict with the rights of broadcast auction winners to construct full power stations on the allotments they won at auction.[38] Rather, the reasonable reading of the CBPA is that Congress intended to protect all authorized analog facilities and all pending applications which were on file by the November 29, 1999 date of enactment.[39]

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36 *See id.*

37 *See* 47 CFR § 73.606.

38 MSTV and NAB note that bidders in the September 1999 broadcast auction were given no notice that their rights as auction winners might be compromised by new Class A stations.

39 MSTV and NAB note that the Commission on November 22, 1999 established a filing window from November 22, 1999 to March 17, 2000 to permit certain NTSC applicants to amend their proposals to eliminate technical conflicts with DTV stations and to move from Channels 60-69. *See* Public Notice, (footnote cont'd)

B. The Analog Service Of Full Power Stations Is Entitled To Contour Protection From Class A Stations.

In paragraph 29 of the Notice, the Commission proposes to require applicants for Class A status to protect the NTSC Grade B contours of full power stations in the manner given in Section 74.705 of the Commission's LPTV rules.[40] The Commission reasoned that "LPTV stations have been engineered to protect the Grade B contour of full-service stations, and continuation of the current standards would be more appropriate than a new and different form of interference protection such as minimum distance separations between stations."[41] MSTV and NAB agree with the proposed interference protection criteria set forth in paragraph 29 of the Notice. In addition, MSTV and NAB agree with the Commission's tentative conclusion that Class A applicants should be permitted to utilize all means for interference analysis afforded to LPTV stations in the DTV proceeding.[42]

C. Class A Stations Proposing To Modify Their Technical Parameters Should Protect The Maximum Analog Facilities Of Full Power Stations.

As discussed in Section III.C, *infra,* stations seeking a Class A designation (with the exception of stations currently operating on out-of-core channels) should be required to file for that designation on their existing channels based on their existing technical parameters. After the initial Class A licensing, however, the Commission has stated it may permit Class A

(footnote cont'd)

DA 99-2605 (rel. Nov. 22, 1999). For purposes of the November 29, 1999 application deadline, the *original* filing dates of such applications should be controlling (rather than the date on which any amendment or modified proposal was filed).

40 *See* Notice at ¶ 29; 47 CFR § 74.705.

41 *See* Notice at ¶ 29.

42 *See id.*

licensees to modify their facilities.[43] In paragraph 46 of the Notice, the Commission requests comment on whether Class A stations seeking to make facilities changes in the future should be required to protect the maximum NTSC facilities of full power stations, even though the full power stations may be precluded from operating with full facilities due to their proximity to DTV stations or allotments.[44]

Class A stations seeking to modify their facilities should be required to protect the maximum NTSC facilities of full power stations. The failure to protect full power stations' maximum NTSC facilities would threaten the ability of stations to return to their analog channels at the end of the DTV transition without suffering a loss of DTV service area, and would diminish the availability of these NTSC allotments for "re-packing" the DTV Table after the transition. In short, changing this policy could compromise the service provided by DTV stations at the end of the transition. Such a change could compromise full service stations' ability even to replicate their existing service areas, to say nothing of the adverse impact it would have on the ability to maximize DTV facilities after re-packing. Moreover, because this rule would be limited to Class A facilities *modifications*, it would be consistent with Congress's goal of granting stability to Class A licensees and, to the extent possible, preserving *existing* service.

On the other hand, full power stations should *not* be required to protect the maximum facilities of Class A stations.[45] The purpose of the CBPA is to protect the existing

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[43] MSTV and NAB agree with the Commission's determination that Class A stations should continue to be subject to the power limits for LPTVs. As the Commission explained, "the current LPTV station power levels are sufficient to preserve existing services, and . . . further increases could hinder the implementation of digital television and could limit the number of Class A stations that could be authorized." *See* Notice at ¶ 54.

[44] *See id.* at ¶ 46.

[45] In paragraph 46 of the Notice, the Commission asks whether, if it requires Class A stations to protect the maximum facilities of full service stations, it should "apply a reciprocal rule as well based on (footnote cont'd)

service of LPTVs that qualify for Class A status, to the extent that such protection may be afforded without compromising the service and potential service of full power television stations. Protecting Class A stations based on their *actual* (rather than maximum) facilities serves this goal. Therefore, full power stations seeking to modify their analog facilities should be required only to protect the actual facilities of Class A stations. MSTV and NAB agree that Class A minor modification applications should be placed on public notice and subject to a petition to deny filing period.[46]

III. THE COMMISSION MUST NOT EXPAND THE POOL OF LOW POWER TELEVISION STATIONS ELIGIBLE FOR CLASS A STATUS.

In paragraph 9 of the Notice, the Commission requests comment on "whether the statute permits the Commission to continue to accept applications to convert to Class A in the future."[47] The CBPA does not grant the Commission this discretion. Rather, it requires that all Class A certifications and applications be filed within the time frames set forth in the Act. The Commission notes that Section 336(f)(2)(B) of the Act "grants the Commission discretion to determine that the public interest, convenience and necessity would be served by treating a station as a qualifying LPTV station, or that a station should be considered to qualify for such status for other reasons."[48] This provision goes to the Commission's discretion to grant *eligibility certifications* to LPTVs that do not technically meet the eligibility criteria set forth in Section

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(footnote cont'd)

protection to the maximum facilities of Class A stations; i.e., based on power limits in the LPTV service." *See id.*

46 *See id.* at ¶ 47.

47 *See id.* at ¶ 9.

48 *See* 47 U.S.C. § 336(f)(2)(B).

336(f)(2)(A). It does not grant the Commission continuing authority to accept eligibility certifications and/or Class A applications outside of the statutory time frames.

Moreover, the Commission *as a matter of policy* should not accept Class A applications from LPTV stations that fail to comply with the certification and application periods provided in the Act, even if it determines it has the authority to do so. At the very least, the Commission should not accept such applications until after the DTV transition. The CBPA focuses on the preservation of existing LPTV service, subject to minimum programming and interference protection requirements. In establishing eligibility criteria for the Class A service, Congress limited eligibility not to all existing LPTVs, but only to LPTVs that had met the statute's minimum programming requirements for the 90-day period *prior* to enactment.[49] In so doing, Congress made clear that Class A status need not be granted to LPTVs that do not currently meet the eligibility criteria under the statute. Moreover, the CBPA provides a short time frame for the filing and resolution of Class A certifications and applications – certifications had to be filed by January 28, 2000, and Class A applications are to be filed within 30 days of adoption of final Class A rules and must be acted upon within 30 days of receipt by the Commission.[50] Thus, the CBPA was not intended to open wide the opportunity for LPTVs to upgrade to Class A status on an ongoing basis. Rather, it was narrowly designed to provide existing LPTVs that meet the programming and interference criteria a one-time opportunity to obtain Class A status.

Therefore, the pool of LPTVs eligible for Class A status should be limited to those qualifying LPTVs who timely filed the required statements of eligibility by the statutorily-

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49 *See* 47 U.S.C. § 336(f)(2).

50 *See* 47 U.S.C. §§ 336(f)(1)(B), (C).

mandated January 28, 2000 deadline, and for whom the Commission determines a certificate of eligibility should be granted. If these Class A-eligible LPTVs fail to file Class A applications within 30 days of adoption of final Class A rules, they should lose this designation and should not be eligible for Class A status in the future. Applications for new Class A stations or to upgrade LPTVs that do not comply with the current certification and application requirements for Class A status should not be accepted.

A. In-Core Class A Applicants.

In-core LPTVs granted a certificate of eligibility should be required to submit their application for Class A status during the initial 30-day window directly following issuance of final Class A rules. Just as LPTVs need certainty as to their status as primary or secondary licensees, full power stations and the Commission need certainty as to which stations will be accorded Class A status. It is only through the filing of a Class A application with its attendant interference showings that the Commission can determine whether an LPTV can be granted Class A status under the CBPA. In-core LPTVs that fail to file the required application for Class A status during the Commission's window would be regarded as having forfeited the opportunity to obtain Class A status.

B. Out-Of-Core Class A Applicants.

MSTV and NAB agree with the Commission's determination in paragraph 51 that it has authority to grant Class A status only to qualifying LPTV stations authorized on Channels 2 through 51.[51] The CBPA provides that LPTVs operating on out-of-core channels may not be granted Class A status, but that if a qualified applicant for a Class A license is assigned a channel within the core, it should be able to obtain Class A status on the new, in-core

channel. Therefore, if out-of-core LPTVs filed eligibility certifications by the January 28, 2000 deadline and their certifications ultimately are granted by the Commission, they should be permitted to file applications for Class A status on in-core channels, if available. The Class A applicant would, of course, be required to meet all of the interference showings applicable to in-core LPTVs seeking Class A status with respect to the applied-for channel.

Like in-core LPTVs, out-of-core LPTVs seeking Class A status should be required to file their Class A applications within the 30-day period following issuance of Class A rules. MSTV and NAB support the Commission's proposal that, to facilitate this process, the Commission should grant a presumption of displacement to LPTVs operating on Channels 52-59. like the presumption currently applicable to Channels 60-69.[52] If the LPTV is unable to locate a suitable in-core channel or otherwise fails to file a Class A application during the 30-day window following adoption of Class A rules, it should forfeit its opportunity to obtain Class A status. This treatment would place Class A-eligible LPTVs on out-of-core channels on even footing with their in-core counterparts – some of whom themselves may be unable to meet the interference showings necessary to obtain Class A status. As noted in Section IV.A below, MSTV and NAB agree with the Commission's determination that contour protection should be provided only after the LPTV station is assigned a channel within the core and granted a Class A license.[53]

(footnote cont'd)

[51] *See* Notice at ¶ 51.

[52] *See id.* at ¶¶ 24, 53.

[53] *See id.* at ¶ 24.

C. Initial Class A Facilities.

In the Notice, the Commission proposes "that initial Class A applications be limited to the conversion of existing facilities to Class A status, with no accompanying changes in those facilities."[54] MSTV and NAB agree that, with the exception of eligible out-of-core LPTVs seeking Class A status on in-core channels (and that, by definition, must propose alternative technical parameters), LPTVs seeking Class A status generally should not be permitted to propose changes to their facilities. As a general rule, initial Class A applications should be limited to existing facilities and technical parameters.[55]

IV. IN IMPLEMENTING THE CBPA, THE FCC SHOULD BE MINDFUL OF THE BALANCE CONGRESS STRUCK BETWEEN AFFORDING PROTECTION TO CLASS A STATIONS AND PRESERVING THE SERVICE OF FULL POWER BROADCASTERS.

A. The Commission Proposes An Overly Restrictive Reading Of Its Duty To Preserve The Service Areas Of LPTVs Eligible For Class A Status.

The CBPA states that "[t]he Commission shall act to preserve the service areas of low-power television licensees pending the final resolution of a class A application."[56] In the Notice, the Commission interprets this provision as requiring it "to preserve the service area of LPTV licensees from the date the Commission receives an acceptable certification of eligibility for Class A status; that is, a certification that is complete and, on its face, meets the Class A eligibility criteria established by statute and any other criteria ultimately approved in this

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54 *See id.* at ¶ 42.

55 This rule should not be applied, however, in cases where Class A-eligible LPTVs have entered into cooperative arrangements with full power stations to change channels or technical parameters in order to facilitate DTV proposals. For example, a number of LPTVs in Utah have agreed to change channels and technical parameters in order to avoid conflicts with a joint DTV tower proposal before the Commission. Such LPTVs, if eligible for Class A status, should be permitted to seek Class A status for the facilities contemplated by the agreement.

56 *See* 47 U.S.C. § 336(f)(1)(D).

proceeding."[57] MSTV and NAB disagree with this reading of the CBPA. The CBPA does not require the Commission to preserve the service area of an LPTV merely because it has filed a certification of eligibility. Rather, the directive that the Commission "act to preserve" the service areas of LPTVs *"pending the final resolution of a class A application"* requires only that these service areas be protected from the time the Class A application is filed until the time that the application is resolved – a 30-day period under the statute. It is only during this period that the application actually is "pending resolution."[58]

If the Commission nonetheless stands by its proposal to protect "to the extent provided in the CBPA and [its] rules" the service area of LPTV licensees "from the date a certification of eligibility is filed with the Commission, as long as the certification is ultimately granted by the Commission,"[59] it will be particularly important that the Commission *not* extend the filing period for Class A applications beyond the 30-day window provided in the CBPA. To do so would afford protection to LPTVs that may not meet the application requirements of the CBPA. Indeed, an extension of this 30-day window would provide a strong incentive for LPTVs holding Class A certifications to delay filing their Class A applications, particularly if they are unable to meet the interference criteria required for grant of a Class A license. Thus, any

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[57] *See* Notice at ¶ 12.

[58] The discussion of this provision in the Conference Report supports this interpretation of the service preservation requirement. The discussion of the service preservation requirement is presented in the context of the Class A application requirements, not the eligibility certifications:

> Subparagraph (C) permits an LPTV station, within 30 days of the issuance of the rules required under subparagraph (A), to submit an application for Class A designation. The FCC must award a Class A license to a qualifying LPTV station within 30 days of receiving such application. Subparagraph (D) mandates that the FCC must act to preserve the signal contours of an LPTV station *pending the final resolution of its application* for a Class A license.

Conference Report at 152 (emphasis added).

[59] *See* Notice at ¶ 12.

protection afforded to the service areas of Class A-eligible LPTVs should be forfeited if the LPTV fails to file a Class A application during the 30-day period immediately following adoption of Class A rules, as provided in the CBPA.

With respect to out-of-core LPTV stations, MSTV and NAB agree with the Commission's determination that service areas of out-of-core LPTVs are not protected under the statute. In paragraph 24 of the Notice, the Commission proposed to "provide protection to such stations only when the station is assigned a channel within the core spectrum and the Commission issues a Class A license."[60] As the Commission correctly points out, "[t]o provide interference protection before the station is assigned an in-core channel appears inconsistent with the Act's prohibition on awarding Class A status to stations outside the core."[61]

Although MSTV and NAB disagree with the Commission's interpretation of the triggering event for preserving the service areas of in-core LPTVs, we do agree with the Commission's determination that its duty to preserve a Class A applicant's service area is not absolute. In the Notice, the Commission noted that the CBPA

> creat[es] three exceptions to the LPTV service preservation requirement: (1) DTV stations seeking to replicate their analog TV service areas within the station's allotted engineering parameters, (2) DTV stations who filed a maximization application or statement of intent to maximize their service areas by December 31, 1999 and a maximization application by May 1, 2000 and (3) DTV stations that encounter technical problems that necessitate adjustments to the stations' DTV allotment parameters, including channel changes.[62]

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60 *See id.* at ¶ 24.

61 *See id.*

62 *See id.* at ¶ 13.

Any duty to preserve the service areas of Class A applicants is subject to the above-described exceptions – in particular, the need to act on maximization applications and to approve other adjustments to the DTV parameters of full power stations, including channel changes, as may be appropriate.

B. A Class A Applicant Must Demonstrate Non-Interference To New DTV Service Authorized Before Filing Of The Class A Application.

The CBPA provides that Class A applicants must protect the digital service areas of stations *subsequently* granted by the Commission "prior to the filing of a Class A application."[63] Thus, Class A applicants should be required to demonstrate protection to whatever new DTV facilities have been authorized at the time the Class A *application* is filed. The interference showings required by the Class A applicant must not be frozen at the time that such applicant files a certification of eligibility. Rather, the Commission should continue to process and grant applications and allotment proposals for new DTV stations in due course (without affording protection to the Class A-eligible LPTV), and the Class A-eligible LPTV should be required to demonstrate interference protection to any DTV stations authorized prior to filing of the Class A application.

C. Applicants For New DTV Stations Should Be Required To Protect Only Class A Authorized Facilities, Not The Facilities Of Class A Applicants Or Class A-Eligible LPTV Stations.

Similarly, the Commission's conclusion that new DTV entrants must preserve the service areas of LPTV stations that have merely been granted certifications of eligibility is unwarranted.[64] The DTV application and allotment proposals of new DTV entrants (*i.e.*, those

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63 *See* 47 U.S.C. § 336(f)(7)(A)(ii)(III).

64 *See* Notice at ¶31.

seeking an initial station license) should not be required to protect the service areas of LPTV stations unless and until Class A status is granted. The directive that the Commission "act to preserve" the LPTV's service area pending final resolution of a Class A application does not impose a duty on the new entrant to demonstrate protection to an LPTV that does not yet have Class A status. It certainly does not require full power DTV applicants to protect an LPTV that merely has filed an eligibility certification. It would be inappropriate to require a DTV new entrant to demonstrate interference protection to an LPTV that has not yet been granted – and ultimately might never be granted – Class A status.

V. TO THE EXTENT THAT THE COMMISSION GRANTS INTERFERENCE PROTECTION TO CLASS A APPLICANTS OR LICENSEES, MSTV AND NAB GENERALLY SUPPORT THE PROPOSED INTERFERENCE PROTECTION CRITERIA.

A. Class A Stations Should Be Protected From Interference Through Protected Signal Contours.

As discussed in detail above, the protection afforded Class A applicants and licensees is subject to a number of exceptions, which balance the desire to upgrade certain LPTVs to Class A status and the need to preserve the public's existing and future full power television service. Assuming that a Class A applicant or station is entitled to interference protection, MSTV and NAB agree with the signal contour approach set forth in paragraph 10 of the Notice.[65] Specifically, the Commission should use for analog Class A television the same protected areas now afforded LPTV stations – 62 dBu for stations on Channels 2-6; 68 dBu for stations on Channels 7-13; and 74 dBu for stations on Channels 14-69, calculated using the

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[65] *See id.* at ¶ 10.

Commission's F(50,50) signal propagation curves.[66] As the Commission explained, "[t]his would preserve existing service provided by LPTV stations and minimize disruption or preclusion of other services."[67]

The Commission proposes to protect digital Class A operations, once authorized, with "those values that define DTV noise-limited service: 28 dBu for channels 2-6; 36 dBu for channels 7-13; and 41 dBu for channels 14-69, calculated as a predicted F(50,90) field strength."[68] These contour values would be appropriate for defining the interference protection to be afforded digital Class A stations.

B. Class A Protection From Full Power NTSC Stations.

In paragraph 14 of the Notice, the Commission proposes a contour overlap approach for protecting Class A applicants from full power NTSC application or rulemaking proposals. Specifically, the Commission proposes to base the protection "on a contour overlap approach similar to that used for LPTV applications protecting the Grade B contour of NTSC stations; i.e., according to the criteria given in Section 74.705 of the LPTV rules."[69] To the extent that the Commission grants Class A applicants protection from such analog proposals, MSTV and NAB agree with the contour overlap approach proposed in paragraph 14.

The Commission also proposes an approach for evaluating future full power NTSC modification proposals, stating that it "would consider the full-service modification application proposal to be acceptable provided it did not increase the amount of predicted

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66 *See id.*

67 *See id.*

68 *See id.*

69 *See id.* at ¶ 14.

interference to the Class A/LPTV station." MSTV and NAB agree with this approach to evaluating future NTSC modification proposals.

C. Class A Protection From Full Power DTV Stations.

In paragraph 15 of the Notice, the Commission asserts that "Class A stations and certified eligible LPTV stations are also entitled to protection from some DTV stations, except as provided in the statute."[70] As discussed in detail in Section I above, full power licensees and the Commission retain substantial discretion to adjust stations' DTV facilities in order to accommodate the challenges that arise during and at the close of the DTV transition. Such adjustments fall within the exceptions to Class A protection provided by the CBPA, and would take priority over the operations of a Class A station. MSTV and NAB emphasize that the majority of changes to full power stations' DTV allotments or parameters should fall within the exceptions to the protection requirements set forth in the statute. To the extent that a particular DTV proposal does not fall within these exceptions, however, MSTV and NAB agree with the Commission's proposal in paragraph 15 of the Notice to protect Class A service areas "in the manner in which DTV applicants protect full-service NTSC stations."[71] Like full power NTSC and DTV stations, Class A stations (whether analog or, in the future, digital) should be subject to "de minimis" interference from full power DTV operations.

D. Class A Protection From LPTV And Translator Applicants.

In the Notice, the Commission proposes that LPTV and TV translator application proposals protect licensed Class A stations "in the manner that LPTV and translator stations now protect each other, as provided in Section 74.707 of the LPTV rules" and that "applications to

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70 *See id.* at ¶ 15.

71 *See id.*

modify Class A stations (subsequent to receiving initial Class A licenses) protect existing Class A service in the same manner."[72] MSTV and NAB agree with this approach.

VI. THE COMMISSION NEED NOT ISSUE CLASS A STATIONS SECOND CHANNELS FOR DIGITAL SERVICE.

The CBPA explicitly states that the Commission is *not required* to issue any additional license for DTV services to Class A or translator stations.[73] Instead, the Commission and Congress have contemplated that these stations will cut over to digital on their existing analog channels toward the end of the DTV transition. To the extent that these stations want to go further and ask for paired channels for their digital service, the Commission should exercise restraint. Consuming scarce spectrum for this purpose in an uncertain and changing environment could tie the Commission's hands in accommodating spectrum needs associated with the transition of full power stations to digital. At the very least, the Commission should wait until it has greater experience with the DTV transition and the Class A service before granting any such applications.

VII. THE COMMISSION CANNOT SELECT 175 CHANNELS UNTIL FULL POWER STATIONS HAVE GAINED EXPERIENCE WITH THE DTV SERVICE AND SELECTED THEIR ULTIMATE DTV CHANNELS.

As explained in the Notice, the CBPA directs the Commission to identify within 18 months the channel, location and applicable technical parameters of the 175 additional channels which were made available for DTV stations and other new digital data services as a result of the Commission's decision in the DTV proceeding to expand the DTV core spectrum to

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72 *See id.* at ¶ 16.

73 *See* 47 U.S.C. § 336(f)(4).

include all Channels 2 to 51.[74] The CBPA precludes the Commission from granting Class A licenses on any of these 175 channels.[75] With respect to this requirement, the Commission reasoned that

> these additional 175 DTV allotments will be part of the spectrum reclaimed at the end of the transition when existing stations end their dual channel analog TV/DTV operation and begin providing only DTV service on a single channel. Some stations will be continuing DTV operation on their DTV channel. Other stations will convert to DTV operation on their analog channel. In either case, the channel on which these stations discontinue operation may become available for other parties. The protection of these DTV allotments that will become available after the transition is effectively provided now because either analog TV or DTV stations are currently authorized and protected on these channels at these locations.[76]

MSTV and NAB agree that, to the extent that these 175 channels are occupied by existing NTSC or DTV allotments, they are protected from Class A stations under the CBPA. These channels will become available for other parties once full-power stations make their final channel elections and discontinue operation on one of their channels. The Commission will be unable to identify the specific 175 channels until full power stations have elected the channels they will retain post-transition and the Commission has adjusted the DTV Table to accommodate out-of-core licensees and correct any service limitations that resulted from transitional spectrum congestion. MSTV and NAB note that the elections cannot reasonably be made nor the DTV Table "re-packed" until full power stations and the Commission have gained more experience with full power DTV service.

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74 *See* Notice at ¶ 25.

75 *See* 47 U.S.C. § 336(f)(6)(B).

76 *See* Notice at ¶ 25.

VIII. CONCLUSION

MSTV and NAB urge the Commission to adopt Class A service rules consistent with the principles set forth above.

Respectfully Submitted,

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